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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JACK LEE PERRY,

12 Plaintiff,

13 v.

14 BREVICK, et al.,

15 Defendants.  
16

No. 2: 21-cv-0065 KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding without counsel. Plaintiff seeks relief pursuant to  
18 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C.  
19 § 1915. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local  
20 Rule 302.

21 Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).  
22 Accordingly, the request to proceed in forma pauperis is granted.

23 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C.  
24 §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in  
25 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct  
26 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
27 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly  
28 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust

1 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court  
 2 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
 3 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief against a  
 5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
 6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
 7 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
 8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
 10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
 12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
 13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
 14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
 15 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
 16 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
 17 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
 18 1227.

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
 20 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
 21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
 22 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
 23 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
 24 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
 25 sufficient "to raise a right to relief above the speculative level." Id. However, "[s]pecific facts  
 26 are not necessary; the statement [of facts] need only 'give the defendant fair notice of what the . .  
 27 . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93 (2007)  
 28 (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal quotations marks omitted).

1 In reviewing a complaint under this standard, the court must accept as true the allegations of the  
2 complaint in question, id., and construe the pleading in the light most favorable to the plaintiff.  
3 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468  
4 U.S. 183 (1984).

5 Named as defendants are Correctional Officer Brevick and Sergeant Moran. Plaintiff's  
6 complaint contains three claims.

7 *Claim One*

8 Plaintiff alleges that on January 16, 2019, defendant Brevick searched plaintiff's cell.  
9 Plaintiff alleges that defendant Brevick left his cell in total disarray. Plaintiff alleges that  
10 defendant Brevick opened a box of his legal documents and left them on the floor. Plaintiff  
11 alleges that other personal property belonging to plaintiff was damaged. Plaintiff alleges that  
12 defendant Brevick took plaintiff's CPAP machine out of its storage bag and left its parts in  
13 different areas of his cell. Plaintiff alleges that the nasal pillows that are necessary to use the  
14 CPAP machine were lost and never replaced. Plaintiff alleges that defendant Brevick took food  
15 items that plaintiff had purchased and threw them on the cell floor. Plaintiff found his toothbrush  
16 under the toilet.

17 Plaintiff alleges that defendant Brevick's search of his cell violated the Eighth and  
18 Fourteenth Amendments and the Equal Protection Clause.

19 The Eighth Amendment protects inmates from cell searches that are conducted solely for  
20 the purpose of harassment. Hudson v. Palmer, 468 U.S. 517, 530 (1984). Courts have found that  
21 frequent and retaliatory cell searches that "result in the 'violent dishevelment of [the prisoner's]  
22 cell' and cause the prisoner to suffer 'fear, mental anguish, and misery,' constitute an Eight  
23 Amendment violation." Scher v. Engelke, 943 F.2d 921, 924 (8th Cir. 1991 (inmate's cell  
24 searched ten times in nineteen days and left in disarray after three searches); see also Blanks v.  
25 Smith, 790 F.Supp. 192, 193–94 (E.D. Wis.1992) (daily body cavity and cell searches for a  
26 period of two weeks); Williams v. Southwoods State Prison, 2007 WL 1752088, \*3 (D. N.J. June  
27 13, 2007) (three cell searches in three days, followed by the filing of two disciplinary reports).

28 Based on the case law set forth above, the undersigned finds that plaintiff has not stated a

1 potentially colorable Eighth Amendment claim based on defendant Brevick's alleged "trashing"  
2 of his cell on the one occasion alleged. Accordingly, this claim is dismissed.

3 Plaintiff may be claiming that the destruction of his personal property violated the  
4 Fourteenth Amendment. The United States Supreme Court has held that "an unauthorized  
5 intentional deprivation of property by a state employee does not constitute a violation of the  
6 procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful  
7 post-deprivation remedy for the loss is available." Hudson v. Palmer, 468 U.S. 517, 533 (1984).  
8 Thus, where the state provides a meaningful post-deprivation remedy, only authorized, intentional  
9 deprivations constitute actionable violations of the Due Process Clause. An authorized  
10 deprivation is one carried out pursuant to established state procedures, regulations, or statutes.  
11 Piatt v. McDougall, 773 F.2d 1032, 1036 (9th Cir. 1985); see also Knudson v. City of Ellensburg,  
12 832 F.2d 1142, 1149 (9th Cir. 1987).

13 In the instant case, plaintiff has not alleged any facts which suggest that the deprivation  
14 was authorized. In other words, plaintiff does not allege that defendant Brevick followed state  
15 procedures when allegedly "trashing" his cell. The California Legislature has provided a remedy  
16 for tort claims against public officials in the California Government Code, §§ 900, et seq.  
17 Because plaintiff has not attempted to seek redress in the state system, he cannot sue in federal  
18 court on the claim that the state deprived him of property without due process of the law.

19 The grounds of plaintiff's Equal Protection claim are unclear. "Prisoners are protected  
20 under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination  
21 based on race." Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Plaintiff's complaint contains  
22 no allegations regarding race discrimination. Accordingly, plaintiff's Equal Protection claim is  
23 dismissed.

#### 24 *Claim Two*

25 Plaintiff alleges that he is mobility impaired, uses mobility assistance devices, suffers  
26 from congestive heart failure and has respiratory issues that require him to use a CPAP machine.

27 Plaintiff alleges that after searching his cell on January 16, 2019, defendant Brevick left  
28 his cell in such a state of disarray that plaintiff had no clear path of travel in his cell. Plaintiff

1 allege that he was unable to navigate or maneuver in his cell or use his CPAP machine. Plaintiff  
2 alleges that defendant Brevick knew that plaintiff was mobility impaired and had medical  
3 conditions. Plaintiff alleges that because he was unable to navigate and maneuver in his cell after  
4 the search by defendant Brevick, plaintiff fell and injured his head, ribs and lower leg. Plaintiff  
5 alleges that he slipped and fell on hair gel that spilled from an open bottle of hair gel that  
6 defendant Brevick left on the floor. Plaintiff was taken by ambulance to an outside hospital for  
7 medical treatment.

8 In claim two, plaintiff alleges violations of the Americans with Disabilities Act (“ADA”)  
9 and the Eighth and Fourteenth Amendments.

10 Plaintiff’s allegations that Brevick left his cell in such disarray that he was unable to  
11 navigate, including leaving spilled hair gel on the floor, that caused plaintiff (who is mobility  
12 impaired) to fall and injure himself, states a potentially colorable Eighth Amendment claim. See  
13 Helling v. McKinney, 509 U.S. 25, 33 (1993) (the Eighth Amendment “requires that inmates be  
14 furnished with the basic human needs, one of which is ‘reasonable safety,’” and “hold[ing]  
15 convicted criminals in unsafe conditions” constitutes cruel and unusual punishment.)

16 In the allegations made in support of claim one and claim two, plaintiff alleges that he was  
17 unable to use his CPAP machine after defendant Brevick scattered the parts of the machine  
18 around the floor and confiscated the pillows required for its use. Based on these allegations, the  
19 undersigned finds that plaintiff has stated a potentially colorable claim against defendant Brevick  
20 for violation of plaintiff’s Eighth Amendment right to adequate medical care.

21 Plaintiff’s claim that defendant Brevick caused him to fall and suffer injuries does not  
22 state a potentially colorable Fourteenth Amendment claim. Accordingly, this claim is dismissed.

23 Title II of the ADA provides that “no qualified individual with a disability shall, by reason  
24 of such disability, be excluded from participation in or be denied the benefits of the services,  
25 programs, or activities of a public entity, or be subjected to discrimination by any such entity.”  
26 42 U.S.C. § 12132. Title II authorizes suits by private citizens for money damages against public  
27 entities, United States v. Georgia, 546 U.S. 151, 153 (2006), and state prisons “fall squarely  
28 within the statutory definition of ‘public entity,’” Pennsylvania Dept. of Corrs. v. Yeskey, 524

1 U.S. 206, 210 (1998).

2 “A plaintiff cannot bring an action under 42 U.S.C. § 1983 against a State official in [his  
3 or] her individual capacity to vindicate rights created by Title II of the ADA....” Vinson v.  
4 Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002). The proper defendant in a Title II claim is the  
5 public entity allegedly responsible for the discrimination. The term “public entity” includes state  
6 prisons. See Pennsylvania Dept. of Corrs. v. Yeskey, 524 U.S. at 210 (holding state prisons are  
7 public entities under Title II). A state official acting in his official capacity may be a proper  
8 defendant pursuant to an ADA Title II claim. Miranda B. v. Kitzhaber, 328 F.3d 1181, 1187-88  
9 (9th Cir. 2003).

10 However, to state a potentially colorable ADA claim against a state official in their  
11 official capacity, plaintiff must allege a policy or custom of the public entity that allegedly  
12 violates federal law. See Hafer v. Melo, 502 U.S. 21, 25 (1991) (“Because the real party in  
13 interest in an official-capacity suit is the governmental entity and not the named official, the  
14 entity’s policy or custom must have played a part in the violation of federal law.” (citation and  
15 internal quotation marks omitted)).

16 In claim two, plaintiff does not allege that a policy or custom of a public entity played a  
17 part in defendant Brevick’s conduct. For this reason, plaintiff has failed to state a potentially  
18 colorable ADA claim against defendant Brevick in their official capacity. Accordingly,  
19 plaintiff’s ADA claim against defendant Brevick is dismissed.

20 *Claim Three*

21 Plaintiff alleges that when he discovered the condition of his cell after the search by  
22 defendant Brevick, plaintiff asked to speak with the floor sergeant, defendant Moran. When  
23 defendant Moran arrived at his cell, plaintiff complained about the condition of his cell after the  
24 search by defendant Brevick. Defendant Moran became agitated with plaintiff. Plaintiff  
25 requested that pictures be taken of his cell. Defendant Moran told plaintiff that pictures had  
26 already been taken of his cell before and after the search.

27 Plaintiff is a participant in the Mental Health Care Services Delivery System at the CCMS  
28 level of care. Plaintiff alleges that returning to his cell had an adverse material effect on his

1 mental health. Plaintiff felt the need to speak with mental health staff and made this request to  
2 defendant Moran. Defendant Moran denied plaintiff's request, stating, "There's nothing wrong  
3 with you. You look fine to me and I'm not contacting mental health because of this." Plaintiff  
4 alleges that defendant Moran denied his request to speak with mental health staff in order to hide  
5 the wrongdoing by defendant Brevick, rather than based on plaintiff's need for mental health  
6 care.

7 Plaintiff asked defendant Moran for the assistance of an assigned ADA worker to help  
8 plaintiff clean his cell. Defendant Moran denied this request.

9 Plaintiff alleges that he was forced to stand at the cell door (as it was the only available  
10 space) for one hour until 1700 hours, at which time he would be let out for dinner. Plaintiff  
11 alleges that between 1700 and 2100 hours, plaintiff continued to ask the housing officers for an  
12 ADA worker to assist him in cleaning his cell because plaintiff is mobility impaired. Plaintiff  
13 also continued to ask for mental health services.

14 At 2100 hours, the housing unit officers informed plaintiff that contact had been made  
15 with defendant Moran who instructed them to tell plaintiff to return to his cell or sit in the  
16 dayroom and suffer the consequences of failing to follow a direct order. Upon returning to his  
17 cell, plaintiff fell on the spilled hair gel and had to be taken by ambulance to an outside hospital.

18 Plaintiff alleges that defendant Moran's refusal to contact mental health staff violated his  
19 Eighth Amendment rights. These allegations state a potentially colorable Eighth Amendment  
20 claim.

21 Plaintiff alleges that defendant Moran's failure to grant plaintiff's request for an ADA  
22 worker to help clean his cell violated the ADA and the Eighth Amendment. Plaintiff's allegations  
23 that defendant Moran denied his request for an ADA worker to help him clean his cell states a  
24 potentially colorable Eighth Amendment claim.

25 Plaintiff's claim that defendant Moran denied his request for an ADA worker does not  
26 state a potentially colorable ADA claim because plaintiff does not allege that a policy or custom  
27 of a public entity played a part in the alleged denial of his request for an ADA worker. See Hafer  
28 v. Melo, supra. For these reasons, plaintiff's ADA claim against defendant Moran is dismissed.

1           *Conclusion*

2           For the reasons discussed above, the undersigned finds that plaintiff has stated the  
3 following potentially colorable claims: 1) defendant Brevick allegedly violated the Eighth  
4 Amendment by leaving plaintiff's cell in such disarray that it caused plaintiff to fall and injure  
5 himself; 2) defendant Brevick allegedly violated plaintiff's Eighth Amendment right to adequate  
6 medical care by rendering plaintiff's CPAP machine unusable; 3) defendant Moran allegedly  
7 violated the Eighth Amendment by denying plaintiff's requests to see mental health staff and for  
8 an ADA worker to help clean his cell. Plaintiff's remaining claims are dismissed.

9           Plaintiff may proceed forthwith to serve defendants Brevick and Moran as to those claims  
10 found potentially colorable or he may delay serving any defendant and attempt to cure the  
11 pleading defects discussed above.

12           If plaintiff elects to attempt to amend his complaint, he has thirty days so to do. He is not  
13 obligated to amend his complaint.

14           If plaintiff elects to proceed forthwith against defendants Moran and Brevick as to his  
15 potentially colorable claims for relief, he shall return the attached notice within thirty days.  
16 Following receipt of that notice, the court will order service of defendants Moran and Brevick as  
17 to the claims found potentially colorable.

18           Plaintiff is advised that in an amended complaint he must clearly identify each defendant  
19 and the action that defendant took that violated his constitutional rights. The court is not required  
20 to review exhibits to determine what plaintiff's charging allegations are as to each named  
21 defendant. The charging allegations must be set forth in the amended complaint so defendants  
22 have fair notice of the claims plaintiff is presenting.

23           Any amended complaint must show the federal court has jurisdiction, the action is brought  
24 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must  
25 contain a request for particular relief. Plaintiff must identify as a defendant only persons who  
26 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.  
27 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation  
28 of a constitutional right if he does an act, participates in another's act or omits to perform an act



1 he is legally required to do that causes the alleged deprivation). If plaintiff contends he was the  
2 victim of a conspiracy, he must identify the participants and allege their agreement to deprive him  
3 of a specific federal constitutional right.

4 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.  
5 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.  
6 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
7 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

8 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
9 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any  
10 heightened pleading standard in cases other than those governed by Rule 9(b)”); Fed. R. Civ. P.  
11 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be  
12 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
13 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,  
14 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff must  
15 not include any preambles, introductions, argument, speeches, explanations, stories, griping,  
16 vouching, evidence, attempts to negate possible defenses, summaries, and the like. McHenry v.  
17 Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming dismissal of § 1983 complaint for  
18 violation of Rule 8 after warning); see Crawford-El v. Britton, 523 U.S. 574, 597 (1998)  
19 (reiterating that “firm application of the Federal Rules of Civil Procedure is fully warranted” in  
20 prisoner cases). The court (and defendant) should be able to read and understand plaintiff’s  
21 pleading within minutes. McHenry, 84 F.3d at 1179-80. A long, rambling pleading including  
22 many defendants with unexplained, tenuous or implausible connection to the alleged  
23 constitutional injury, or joining a series of unrelated claims against many defendants, very likely  
24 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing plaintiff’s  
25 action pursuant to Fed. R. Civ. P. 41 for violation of these instructions.

26 A district court must construe a pro se pleading “liberally” to determine if it states a claim  
27 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an  
28 opportunity to cure them. See Lopez, 203 F.3d at 1130-31. While detailed factual allegations are

not required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft, 556 U.S. at 678 (quoting Bell Atlantic Corp., 550 U.S. at 570).

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Ashcroft, 556 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions can provide the framework of a complaint, they must be supported by factual allegations, and are not entitled to the assumption of truth. Id. at 1950.

An amended complaint must be complete in itself without reference to any prior pleading. Local Rule 220; See Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint supersedes the original, the latter being treated thereafter as non-existent.’” (internal citation omitted)). Once plaintiff files an amended complaint, the original pleading is superseded.

By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has evidentiary support for his allegations, and for violation of this rule the court may impose sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

A prisoner may bring no § 1983 action until he has exhausted such administrative remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. Booth v. Churner, 532 U.S. 731, 741 (2001). California prisoners or parolees may appeal “departmental policies, decisions, actions, conditions, or omissions that have a material adverse effect on the [ir] welfare. . . .” Cal. Code Regs. tit. 15, §§ 3084.1, et seq. An appeal must be presented on a CDC form 602 that asks simply that the prisoner “describe the problem” and “action requested.” Therefore, this court ordinarily will review only claims against prison officials within the scope of

1 the problem reported in a CDC form 602 or an interview or claims that were or should have been  
2 uncovered in the review promised by the department.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
6 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
7 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
8 Director of the California Department of Corrections and Rehabilitation filed concurrently  
9 herewith.

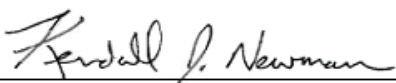
10 3. All claims but for the following claims are dismissed with leave to amend:

11 1) defendant Brevick allegedly violated the Eighth Amendment by leaving plaintiff's cell in such  
12 disarray after the search that it caused plaintiff to fall; 2) defendant Brevick allegedly violated  
13 plaintiff's Eighth Amendment right to adequate medical care by rendering plaintiff's CPAP  
14 machine unusable; and 3) defendant Moran allegedly violated the Eighth Amendment by denying  
15 plaintiff's requests to see mental health staff and for an ADA worker to help clean his cell.  
16 Within thirty days of service of this order, plaintiff may file an amended complaint. Plaintiff is  
17 not obliged to amend his complaint.

18 4. The allegations in the pleading are sufficient to state potentially colorable Eighth  
19 Amendment claims against defendants Brevick and Moran. See 28 U.S.C. § 1915A. If plaintiff  
20 opts to proceed on his original complaint as to these defendants, he shall return the attached  
21 notice within thirty days of service of this order.

22 5. Failure to comply with this order will result in a recommendation that this action be  
23 dismissed.

24 Dated: February 2, 2021

25   
26 KENDALL J. NEWMAN  
27 UNITED STATES MAGISTRATE JUDGE  
28

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACK LEE PERRY,

Plaintiff,

v.

BREVICK, et al.,

Defendants.

No. 2: 21-cv-0065 KJN P

NOTICE

Plaintiff opts to proceed with the original complaint as to the following claims: 1) defendant Brevick allegedly violated the Eighth Amendment by leaving plaintiff's cell in such disarray that it caused plaintiff to fall and injure himself; 2) defendant Brevick allegedly violated plaintiff's Eighth Amendment right to adequate medical care by rendering plaintiff's CPAP machine unusable; and 3) defendant Moran allegedly violated the Eighth Amendment by denying plaintiff's requests to see mental health staff and for an ADA worker to help clean his cell.

Plaintiff consents to the dismissal of his remaining claims against defendants Brevick and Moran without prejudice. \_\_\_\_\_

OR

\_\_\_\_\_ Plaintiff opts to file an amended complaint and delay service of process.

DATED:

\_\_\_\_\_  
Plaintiff